

ACE & ACME, INC.	)	
	)	
	)	
Employer,	)	
	)	
and	)	1-RD-162954
	)	
TEAMSTERS LOCAL 25,	)	
	)	
Incumbent Union,	)	
	)	
and	)	
	)	
ERIC GALVAO,	)	
	)	
Petitioner.	)	
	)	

The incumbent union, International Brotherhood of Teamsters Local 25 requests review of the Decision and Direction of Election in the above-referenced case.

On April 7, 2015, Teamsters Local 25 (“Local 25”) and Ace & Acme (“the Company”) negotiated a collective bargaining agreement effective April 1, 2015 through March 31, 2020. On the same date, the parties agreed to a “Closing Agreement” because the Company notified Local 25 during negotiations that it intended to close for business on December 31, 2015. (Exhibit A).

The Closing Agreement provides certain conditions if the Company does, in fact, close on December 31, 2015 such as: 1) Ace & Acme shall provide Teamsters Local 25 with 30 days' written notice of the closing date; 2) Ace & Acme shall notify any successor of the existence and applicability of the 2015-2020 collective bargaining agreement; 3) laid off employees shall

receive severance pay; and 4) Ace & Acme shall refer clients to Teamsters Local 25's preferred alternative provider of furniture moving services.

In August 2015, the Company expressed an interest in remaining open past December 31, but only if Local 25 agreed to renegotiate portions of the collective bargaining agreement. (Exhibit B). Local 25 refused.

On October 29, 2015, Eric Galvao (Galvao), a warehouseman and relative of a member of management, filed the present decertification petition. On November 9, 2015, the Company and the Local 25 presented their positions before Hearing Officer Lucy Reyes.<sup>1</sup> At the hearing, the Company again offered to remain open if the Union renegotiated portions of the contract. Local 25 refused.

On November 30, 2016, the Company notified Local 25 that it planned to close the furniture moving portion of its business. (Exhibit C). On December 1, 2016, the Company made another attempt to force Local 25 to renegotiate the contract under the threat of lay-offs. (Exhibit D). Local 25 again refused.

On December 31, 2015, the Company closed the furniture moving portion of its business and laid off all the drivers. It closed completely until January 5, 2016.

### **The Contract Bar Doctrine**

Local 25's position is that once the Company informed Local 25 that it intended to remain open beyond December 31, 2015, the April 1, 2015 – March 30, 2020 contract acts as a bar to any petition. The Closing Agreement was entered into because the Company “decided to permanently cease its operations and close its business” and thus to allow for an “appropriate and professional wind-down of operations.” Beginning in August 2015, the Company repeatedly informed Local 25 that it desired to remain open – just not under the agreed-upon terms.

---

<sup>1</sup> The petitioner, Eric Galvao, did not appear.

Therefore, the cornerstone of the Closing Agreement – the Company’s intent to close - no longer existed. The parties knew that the Company intended on operating in some form beyond December 31, 2015.

In *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 860-861 (1999), the Board explained the contract bar doctrine as follows:

[The contract bar] doctrine's dual rationale is to permit the employer, the employees' chosen collective-bargaining representative, and the employees a reasonable, uninterrupted period of collective-bargaining stability, while also permitting the employees, at reasonable times, to change their bargaining representative, if that is their desire. It is worth noting that the contract-bar doctrine is not compelled by the Act or by judicial decision there under. It is an administrative device early adopted by the Board in the exercise of its discretion as a means of maintaining stability of collective bargaining relationships. **The Board has discretion to apply a contract bar or waive its application consistent with the facts of a given case, guided overall by our interest in stability and fairness in collective-bargaining agreements** [emphasis added].

Employees had the opportunity to file a petition in the 60-90 day window prior to March 30, 2015 and also between April 1, 2015 and April 7, 2015 when no contract was in place. Further, this is not a case in which any of the contracting parties foreclosed any opportunity for employees to file a petition to change their representation. See, e.g. *Ameriguard Security Services Inc.*, 362 NLRB 160 (2015) and *Auburn Rubber Co, Inc.* 140 NLRB 919 (1963) (cases examining the “premature extension doctrine”).

The parties have a long-standing collective bargaining agreement. When the Company threatened to close, the parties came to agreement to address that possibility. However, if that possibility did not occur, the parties agreed to continue their relationship into 2020.

Therefore, guided by its interest in stability and fairness in collective bargaining agreement, the Board should enforce the contract bar doctrine.

## Conclusion

This case is overshadowed by Local 25's belief that the Company is engaged in a scheme to evade its obligations under its agreement with Local 25. Initially, the Company informed Local 25 that it planned to close entirely. It is striking that the Company only laid off drivers, while retaining the two warehousemen who both support the decertification petition. It is utilizing anti-union employees and managers to keep the Company running at some level until a decision is reached on the decertification petition. Surely, if the Board upholds the decertification, Ace & Acme will reopen its furniture delivery business. Local 25 understands that it may file unfair labor practices when that day comes, but at that point the damage will be done.

Local 25 urges the Board to exercise its discretion to enforce the contract bar doctrine in order to maintain stability and fairness in this collective bargaining relationship. The Company should not be rewarded for its admittedly well-crafted plan to escape its collective bargaining obligations.

Respectfully submitted,

Teamsters Local 25,  
By its attorney,



---

Nicholas Chalupa, Esq.  
Feinberg, Campbell & Zack, P.C.  
177 Milk Street  
Boston, MA 02109  
(617) 338-1976

DATED: May 6, 2016